March 26 1872.

Submitted

Judge Clifford

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. ~~356.~~ 154

THE UNITED STATES, APPELLANTS,

vs.

AMHERST H. WILDER, APPELLEE.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 8, 1870.

~~Oct~~

April 3 1872

Dismissed

Mr Davis

SUPREME COURT OF THE UNITED STATES.

No. 356.

THE UNITED STATES, APPELLANTS,

vs.

AMHERST H. WILDER, APPELLEE.

APPEAL FROM THE COURT OF CLAIMS.

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1 United States Court of Claims, December term, 1869.

AMHERST H. WILDER
vs.
THE UNITED STATES. } No. 5975.

Petition.—Filed Aug. 26, 1869.

To the honorable the Court of Claims:

Amherst H. Wilder, humbly petitioning this honorable court, respectfully shows and alleges that he is a citizen of the United States, and does reside at St. Paul, in the county of Ramsey and State of Minnesota, and that heretofore, during the year A. D. 1863, and for a long time prior and subsequent thereto, James C. Burbank, Henry C. Burbank, John L. Merriam, and Amherst H. Wilder, your petitioner, were general copartners in business, under the firm-name and style of J. C. & H. C. Burbank & Co., and that while they were such copartners, and on or about the seventeenth of July, A. D. 1863, said firm of J. C. & H. C. Burbank & Co., did enter into a verbal contract and agreement to and with E. B. Carling, captain and assistant quartermaster in the United States Army, and acting and contracting for and on behalf of the United States, to transport two hundred and nineteen thousand seven hundred and sixty-three (219,763) pounds of military supplies, from St. Paul, Minnesota, to Fort Abercrombie, in Dakota Territory, in consideration of being paid therefor by the United States so much as said
2 transportation was reasonably worth per pound, for every pound so transported, and the said Captain Elias B. Carling, assistant quartermaster in the United States Army, as aforesaid, and an officer of the United States, duly commissioned and empowered to act in the premises, and acting for and on behalf of the United States, did there, to wit, at St. Paul, Minnesota, on the seventeenth day of July, A. D. 1863, undertake and promise to pay J. C. & H. C. Burbank & Co,, so much per pound for the transportation of said two hundred and nineteen thousand seven hundred and sixty-three (219,763) pounds of military supplies, from St. Paul, Minnesota, to Fort Abercrombie, Dakota Territory, as the same was reasonably worth. And your petitioner further alleges, that said copartnership firm did transport said two hundred and nineteen thousand seven hundred and sixty-three pounds of military supplies, from St. Paul, Minnesota, to Fort Abercrombie, Dakota Territory, between the seventeenth day of July, A. D. 1863, and thirteenth day of September, A. D. 1863, as they had promised and agreed to do in consideration aforesaid; and your petitioner alleges, that the transportation of said military supplies was reasonably worth four and one-half cents per pound for every pound so transported, as aforesaid, and that said Captain Elias B. Carling, assistant quartermaster United States Army, and acting for and in behalf of the United States, did fail and refuse to pay said copartnership firm so much per pound for the said military supplies so transported as the same was reasonably worth, but did advance and pay, on account of said transportation, six thousand three hundred and seventy-three dollars and twelve cents, and no more, on the first day of October, A. D. 1863, and at the same time did admit and agree that the said transportation was reasonably worth four and one-half cents per pound for every pound so transported, as aforesaid, but did fail and refuse to pay the balance due for said transportation, to wit, the sum of three thousand five hundred and sixteen dollars and twenty-one cents, according to the contract and agreement aforesaid.

And your petitioner further alleges that heretofore, to wit, on
3 or about the first day of March, A. D. 1866, the said copartnership firm of J. C. & H. C. Burbank & Co., did dissolve their said copartnership, and all the claims, demands, and choses in action of said copartnership firm were then assigned, transferred, and made over, to Amherst H. Wilder, your petitioner, in consideration of his assuming to settle and pay all the liabilities of said firm, which he did then and there do.

And your petitioner further alleges that, on or about the 22d day of February, A. D 1864, the said firm of J. C. & H. C. Burbank & Co. made application to the Quartermaster General and Department of War, to allow and pay them the balance due for said transportation as aforesaid, and that said application was referred by said Department to a board of commissioners organized by said Department to settle and adjust claims, and that said board, through its chairman, reported in favor of said application and the allowance of said claim, but that said report was disapproved by the Secretary of the Department of War, and that said Department, by said disapproval, refuse to allow or pay said claim, and that no other or further decision has been made and furnished your petitioner by said Department.

And your petitioner alleges that he is the lawful owner of said claim and the sole party interested therein, and that James C. Burbank, Henry C. Burbank, John L. Merriam, and your petitioner, have each and all, at all times born true allegiance to the Government of the United States, and that neither of them has in any way voluntarily aided, abetted, or given encouragement to any rebellion against said Government.

Wherefore your petitioner prays for and demands judgment against the United States for three thousand five hundred and sixteen dollars and twenty-one cents.

SANBORN & KING,
Attorneys for Claimant.

4 STATE OF MINNESOTA, *County of Ramsey, ss:*

AMHERST H. WILDER, being first duly sworn, deposes and says that he is the claimant in the above-entitled cause, and that no assignment or transfer of said claim or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts stated in said petition are true.

AMHERST H. WILDER.

Sworn to and subscribed before me this 21st day of August, A. D. 1869.

[L. S.] JOHN DAVIDSON,
Notary Public, Ramsey County, Minn.

Post-office address of claimant: Amherst H. Wilder, St. Paul, Minnesota.

Post-office address of claimant's counsel: Sanborn & King, Washington, D. C.

5 United States Court of Claims, December term, 1869.

JAMES C. BURBANK, HENRY C. BURBANK, JOHN L. Merriam, and Amherst H. Wilder, late copartners in business under the firm-name of J. C. & H. C. Burbank & Co., for the benefit of Amherst H. Wilder,
vs.
THE UNITED STATES. } No. 5975.

Amended petition.

To the honorable the Court of Claims:

The claimants above named, humbly petitioning this honorable court, respectfully show and allege that they are citizens of the United States, and do reside at St. Paul, in the county of Ramsey, and State of Minnesota; and that heretofore, during the year A. D. 1863, and for a long time prior and subsequent thereto, James C. Burbank, Henry C. Burbank, John L. Merriam, and Amherst H. Wilder, were general copartners in business under the firm-name and style of J. C. & H. C. Burbank & Co.; and that, while they were such copartners, and on or about the 17th day of July, A. D. 1863, said firm of J. C. & H. C. Burbank & Co. did enter into a verbal contract and agreement to and with E. B. Carling, captain and assistant quartermaster in the United States Army, and acting and contracting for and on behalf of the United States, to transport two hundred and nineteen thousand seven hundred and sixty-three (219,763) pounds of military supplies from St. Paul, Minnesota, to Fort Abercrombie, in Dakota Territory, in consideration of being
6 paid therefor, by the United States, so much as said transportation was reasonably worth per pound for every pound so transported; and the said Captain Elias B. Carling, assistant quartermaster in the United States Army, as aforesaid, and an officer of the United States, duly commissioned and empowered to act in the premises, and acting for and in behalf of the United States, did there, to wit, at St. Paul, Minnesota, on the seventeenth day of July, A. D. 1863, undertake and promise to pay J. C. & H. C. Burbank & Co. so much per pound for the transportation of said two hundred and nineteen thousand seven hundred and sixty-three (219,763) pounds of military supplies from St. Paul, Minnesota, to Fort Abercrombie, Dakota Territory, as the same was reasonably worth.

And your petitioners further allege that said copartnership firm did transport said two hundred and nineteen thousand seven hundred and sixty-three pounds of military supplies from St. Paul, Minnesota, to Fort Abercrombie, Dakota Territory, between the seventeenth day of July, A. D. 1863, and thirteenth day of September, A. D. 1863, as they had promised and agreed to do in consideration aforesaid; and your petitioners allege that the transportation of said military supplies was reasonably worth four and one-half cents per pound for every pound so transported as aforesaid, and that said Captain Elias B. Carling, assistant quartermaster United States Army, and acting for and in behalf of the United States, did fail and refuse to pay said copartnership firm so much per pound for the said military supplies so transported as the same was reasonably worth, but did advance and pay on account of said transportation six thousand three hundred and seventy-three dollars and twelve cents, and no more, on the first day of October, A. D. 1863, and at the same time did admit and agree that the said transporta-

tion was reasonably worth four and one-half cents per pound for every pound so transported as aforesaid, but did fail and refuse to pay the balance due for said transportation, to wit, the sum of three thousand five hundred and sixteen dollars and twenty-one cents, according to the contract and agreement aforesaid.

And your petitioners further allege that heretofore, to wit, on or
7 about the first day of March, A. D. 1866, the said copartnership firm of J. C. & H. C. Burbank & Co. did dissolve their said copartnership and all the claims, demands, and choses in action of said copartnership firm were then assigned, transferred, and made over to Amherst H. Wilder, your petitioner, in consideration of his assuming to settle and pay all the liabilities of said firm, which he did then and there do.

And your petitioner further alleges that, on or about the 22d day of February, A. D. 1864, the said firm of J. C. & H. C. Burbank & Co. made application to the Quartermaster General and Department of War to allow and pay them the balance due for said transportation as aforesaid; and that said application was referred by said Department to a board of commissioners organized by said Department to settle and adjust claims; and that said board, through its chairman, reported in favor of said application and the allowance of said claim, but that said report was disapproved by the Secretary of the Department of War, and that said Department, by said disapproval, refuse to allow or pay said claim, and that no other or further decision has been made and furnished your petitioner by said Department.

And your petitioners allege that they are the lawful owners of said claim, and said Amherst H. Wilder is the sole party interested therein, and that James C. Burbank, Henry C. Burbank, John L. Merriam, and Amherst H. Wilder, have each and all, at all times borne true allegiance to the Government of the United States, and that neither of them has in any way voluntarily aided, abetted, or given encouragement to any rebellion against said Government.

Wherefore your petitioners pray for and demand judgment against the United States for three thousand five hundred and sixteen dollars and twenty-one cents for the benefit of Amherst H. Wilder.

SANBORN & KING,
Attorneys for Claimant.

8 DISTRICT OF COLUMBIA,
County of Washington, ss:

Amherst H. Wilder, being first duly sworn, deposes and says that he is the claimant in the above-entitled cause, and that no assignment or transfer of said claim or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts stated in said petition are true.

AMHERST H. WILDER.

Sworn to and subscribed before me this 21st day of April, A. D. 1870.
[L. S.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Post office address of claimant: Amherst H. Wilder, St. Paul, Minnesota.

Post office address of the claimant's counsel: Sanborn & King, Washington, D. C.

9 In the United States Court of Claims, December term, A. D. 1869.

AMHERST H. WILDER
vs.
THE UNITED STATES. } No. 5975.

And the said defendants, by their Attorney General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And, as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of $3,516 21, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has, at all times, borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

THOMAS H. TALBOT,
Assistant Attorney General.

10 In the Court of Claims.

AMHERST H. WILDER
vs.
THE UNITED STATES. } 5975.

And now, to wit, 16th of May, A. D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Amherst H. Wilder have and recover of and from the United States the sum of three thousand five hundred & sixteen dollars twenty-one cents, ($3,516 21.)

By the court:
A true copy of record.

11 In the Court of Claims, Dec. term, 1869.

AMHERST H. WILDER
vs.
THE UNITED STATES. } 5975.

The defendants, by their Attorney General, come and take an appeal to the Supreme Court of the United States from the decision of this court in this case rendered this day.

THOMAS H. TALBOT,
Ass't Att'y Gen'l.

MAY 16, 1870.

Filed in the clerk's office 16 May, 1870.

Ordered that the appeal, as prayed in the case of Amherst H. Wilder vs. The United States, 5975, be allowed.

By the court:
MAY 16, 1870.

12 In the Court of Claims.

AMHERST H. WILDER
vs.
THE UNITED STATES. } No. 5975.

The finding of facts and the conclusions of law on said facts on which the court founded its opinion.

This cause coming on to be heard the 16th day of May, 1870, before all of the judges of the Court of Claims, the said court finds, as matters of fact:

I. The firm of J. C. and H. C. Burbank and Co. contracted with Major McKinstry, a duly authorized quartermaster of the defendants, on the 23rd May, A. D. 1861, as follows:

"Fourth. That they will receive at St. Paul, Minnesota, store, attend to forwarding and transporting, all public stores delivered to them at the rates following, to wit: From St. Paul to Fort Abercrombie, D. T., two dollars and ninety cents per one hundred pounds, to be transported overland in water-proof covered wagons—time, about twelve days; or with privilege of carrying between St. Anthony and St. Cloud during season of navigation by steamboats—balance of route by water-proof covered wagons—between the 15th of April and 15th of September, from St. Paul to Fort Abercrombie, D. T., at two dollars and
13 forty cents per one hundred pounds; and for all public stores delivered to them, between the 15th of September and the 15th of April, at St. Paul, Minnesota, at the rates following, to wit: From St. Paul to Fort Abercrombie, D. T., three dollars and five cents per one hundred."

The contract specified no period of duration, but the parties acted under and in pursuance of its terms until the 19th July, 1863. On that day Captain E. B. Carling, an assistant quartermaster, in charge of the department at St. Paul, being obliged to send forward quartermaster and commissary stores to Fort Abercrombie in a military exigency, notified Burbank and Co. to receive and transport them under the contract referred to. But Burbank and Co. declined to receive and transport the goods under that contract, and refused to acknowledge its force or validity, and represented that the Indian hostilities had greatly increased the cost of transportation. Captain Carling, being unable to obtain transportation from other parties, thereupon entered into a verbal agreement with them that they should transport such supplies, and should receive for their services whatever price the same might be reasonably worth. The firm of Burbank and Co. thereupon received and transported the goods and stores, set
14 forth in the petition, from St. Paul to Fort Abercrombie, and performed all the requirements of the agreement. The quartermaster, Captain Carling, fixed the value subsequently at, and the transportation was reasonably worth, $4 50 per hundred pounds. But the Quartermaster Department refused to allow or pay to Burbank and Co. any greater price than $2 90 per hundred pounds for the alleged reason that the obligations of the original written contract had not been terminated by reasonable notice, and that the services should justly and legally be deemed to have been rendered thereunder and at the agreed rate of compensation.

II. The services set forth in the petition were performed and completed by Burbank & Co. at Fort Abercrombie on the 31st July, 1863.

On the 1st October, 1863, the firm was paid by the quartermaster, at St. Paul, six thousand three hundred and ninety-three dollars and twelve cents, being a payment at the rate of $2 90 per hundred pounds, and leaving unpaid a balance of $3,516 21. This balance the defendants then and there refused to pay, and it still remains unpaid, as is correctly alleged and set forth in the petition. The petition, by which this action was commenced on such alleged indebtedness, was filed in this court the 26th August, 1869, being more than six
15 years from the time the services were performed, and less than six years from the time of payment and refusal, as described.

And upon these facts the Court of Claims, as a conclusion of law, decides:

I. That the claimants have a good and valid cause of action upon the parol agreement, set forth in the second finding of fact, for the fair and reasonable value of the services rendered by them to the defendants, and that they should recover the balance remaining due thereupon, to wit, the sum of $3,516 21.

II. That the claimants are not barred from maintaining this suit upon the facts set forth in the second finding under and within the true intent and meaning of the act 3rd March, 1863. (12 Stat. L., p. 765, sec. 10.)

By the court:

16 In the Court of Claims.

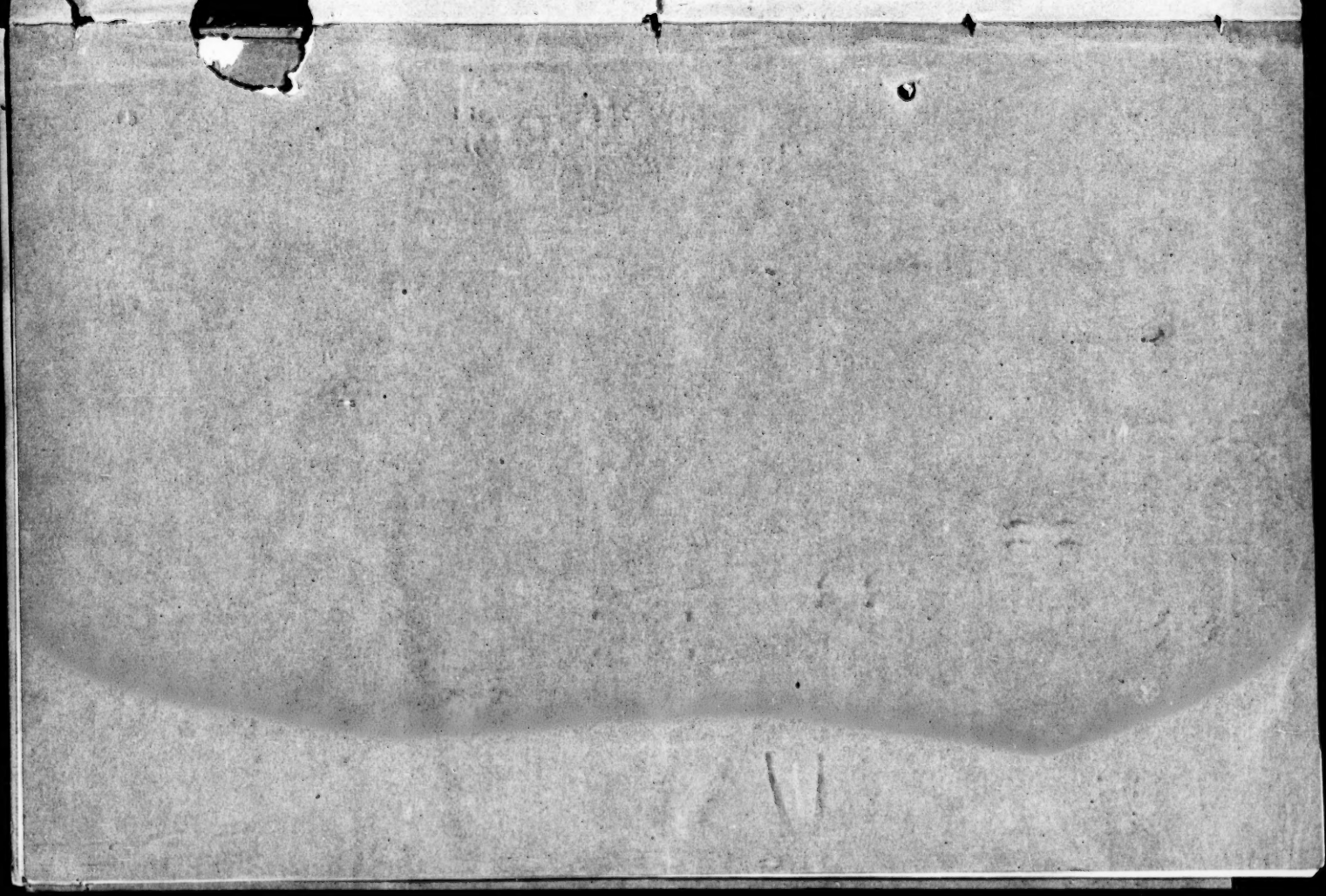
AMHERST H. WILDER
vs.
THE UNITED STATES. } No. 5975.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for the defendants for the allowance of an appeal, as filed in the clerk's office 16 May, 1870, and of the order of the court of 16 May, 1870, allowing the same; of the finding of facts, and the conclusions of law on said facts, on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this eighth day of December, 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 356. The United States, appellants, vs. Amherst H. Wilder. Court of Claims. Filed 8th December, 1870.



In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Appellant*,
vs.
AMHERST H. WILDER. } No. 154.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Appellant*,
vs.
AMHERST H. WILDER. } No. 154.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

On the 23d of May, 1861, the firm of J. C. and H. C. Burbank & Co. contracted with Major McKinstry, a United States quartermaster, to furnish transportation for all public stores from St. Paul, Minn., to Fort Abercrombie, Dakota Territory, at the rate of $2 90 per one hundred pounds (Record, p. 6.) The contract specified no period of duration, but the parties acted under and in pursuance of its terms, until the 19th of July, 1863. On that day, Captain Carling, an assistant quartermaster in charge of the department at St. Paul, being obliged to send forward quartermaster and commissary stores to Fort Abercrombie, in a military exigency, notified Burbank & Co. to receive and transport them under the contract referred to. But Burbank & Co. declined to receive and transport the goods under that contract,

and refused to acknowledge its force and validity. Carling, being unable to obtain transportation from other parties, thereupon entered into a verbal agreement with them that they should transport such supplies, and should receive for their services whatever price the same might be reasonably worth; which they did. Carling fixed the value thereof at $4 50 per one hundred pounds. But the Quartermaster's Department refused to allow or pay to Burkank & Co. any greater price than $2 90 per one hundred pounds, for the alleged reason that the obligations of the original contract had not been terminated by reasonable notice, and that the services should justly and legally be deemed to have been rendered thereunder, and at the agreed rate of compensation.

The services were performed and completed on the 31st of July, 1863.

On the 1st of October, 1863, Burbank & Co. were paid by the quartermaster $6,393 72, being a payment at the rate of $2 90 per one hundred pounds, and leaving unpaid $3,516 21; which "the defendants then and there refused to pay, and it still remains unpaid." (Record, page 7.)

The petition was filed in the Court of Claims on the 26th of August, 1869, being more than six years from the time the services were performed, and less than six years from the time of payment.

Upon these facts the Court of Claims decided:

First. That the claimants have a good and valid cause of action upon the parol agreement.

Second. That the claimants are not barred from maintaining this suit upon the facts set forth in the second finding under and within the true intent and meaning of the act of March 3, 1863. (12 Stat., p. 765.)

The United States appeals, and alleges as error that the cause was barred by the statute of limitations, and that the Court of Claims should have so held.

ARGUMENT.

The findings of the Court of Claims, in respect of the payment made in October, 1863, may be slightly ambiguous; but, from the opinion of the Court of Claims in this case, it shows that the payment was made by the Quartermaster's Department under the assumption that the old contract was still in force, and did not recognize the new contract.

Wilder *vs.* The United States, 5 Court of Claims, pp. 462, 466.

And such is the real meaning of the findings.

It may well be questioned whether any officer of the United States is authorized, by making payment in behalf of the United States, to acknowledge that a debt is due so as to take it out of the statute of limitations of March 3, 1863.

But however that may be, it is perfectly apparent that the payment in this case did not acknowledge that the amount for which the suit is brought was due from the United States, and that consequently no promise to pay the residue claimed can be implied from the payment previously made, and therefore, according to

all the authorities, the case is not taken out of the statute.

Clementson *vs.* Williams, 8 Cranch, 72.
Wetzell *vs.* Bussard, 11 Wheat., 310.
Bell *vs.* Morrison, 1 Pet., 352.
Moore *vs.* Bank of Columbia, 6 Pet., 86.
Tippett *vs.* Heane, 4 Tyrwh., 772.
Waugh *vs.* Cope, 6 M. & W., 824.

C. H. HILL,
Assistant Attorney General.

Supreme Court of the United States.

DECEMBER TERM, 1871.

No. 154.

THE UNITED STATES, Appellant.

vs.

AMHERST H. WILDER, Appellee.

BRIEF FOR APPELLEE.

JUDD & DETWEILER, Printers, Washington, D. C.

Supreme Court of the United States.

DECEMBER TERM, 1871.

No. 154.

THE UNITED STATES, Appellant,

vs.

AMHERST H. WILDER, Appellee.

BRIEF FOR APPELLEE.

I. The provisions of the tenth section of the "Act making appropriations for sundry civil expenses of the Government for the year ending June thirtieth, eighteen hundred and sixty-two," are, that " no contract, or purchase shall hereafter be made unless the same be authorized by law or be under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters or transportation, *which, however, shall not exceed the necessities of the current year.*"

The contract entered into between the appellants and appellee, on the 23d day of May, A. D. 1861, expired by virtue of the above statute on the 30th day of June, A. D. 1862, at latest date. If the words " current year" are construed to mean current fiscal year, it would have expired at an earlier date. The laws relating to contracts that may be made without authority of law, and without reference to an appropriation by Congress, should be *strictly construed.*

A contract cannot be made, nor exist, in violation of the

statute authorizing it, for such statute enters into and becomes a controlling element in the contract.

Section 10, chapter 84, page 220, 12 Statutes at Large.

This contract was capable of a construction consistent with the law, and hence should receive such construction.

Gibbons *vs.* The United States, Dev. C. C., 46.

II. When the extent and force of a contract is limited by statute, no act of the parties can extend it further or give it more force. If the parties to it continue to act upon its terms, each act or transaction, when completed, is a new executed contract.

III. A contract is of no force or validity unless binding upon all parties to it. It cannot be contended that this contract was binding upon the United States longer than one year from its date, and hence could not be binding upon the appellee. And where no provision is made in a contract entered into for an indefinite period of time for notice to be given of its termination, either party may terminate the same at his option without notice. Mutuality is essential to the validity of a contract.

Walker *vs.* Coulson, 1 McLean, 120; 9 Peters, 62.

IV. The verbal or parol contract entered into by the appellants by and through the assistant quartermaster was binding and valid in law. It was made to meet a military exigency.

V. The payment of October, 1863, was accompanied by no words of denial of the balance claimed as per record, but with words of promise as to payment of the same, (p, 42; record below.) But payment of a part of a claim raises by implication of law a new promise to pay the balance due, and the statute of limitation commences to run anew from the time of such payment; and the fact that the debtor thereafter refused to pay the balance of the claim, which was admitted at the time of such payment, cannot effect this implied promise.

Parsons on Contracts, pages 73–79, inclusive, and authorities.

VI. Under the rules of the Court of Claims, when this action was brought, the claimant was compelled to show that application for the allowance of his claim had been made to the proper executive department, and without success, and its decision thereon.—(See secord rule of Court of Claims, 1869, and previously.)

The Statute of Limitations runs against the remedy only. Hence does not run while there is no remedy in court.

There was no remedy in this case until the final failure of suecess in the executive department, which, as appears by the record, was within six years, and, in point of fact, as appears by the record in the court below, was within a few days of the time in which suit was brought in the Court of Claims. And hence the claim is not barred by the Statute of Limitations. A different construction under this rule would place it in the power of an executive department to bar all claims cognizable by the Court of Claims by simply refusing to act for six years.

Webster *vs.* Cooper, 14 Howard, 488.

Richardson *vs.* Curtice, 3 Bl. C. C., 385.

VII. The words of limitation in the statute of 21st James I, chapter 16, are as follows: "within six years next after the cause of such action or suit, and not after." (Section 3 of said act; Angell on Limitations, p. 5 of appendix, 5th edition.)

The words of limitation in the act of Congress "to amend an act to establish a court for the investigation of claims against the United States, and approved March 3d, 1863, are as follows: 'within six years after the claim first accrues.'" (P. 767, sec. 10, 12 Statutes at Large.)

The language of both statutes is of the same force and should receive the same construction. It is of the same import as the language used in all statutes of limitations since that of James I. Hence the rules of decision which have been made and laid down in regard to statutes of limitations generally are application to the statute organizing and conferring jurisdiction on the Court of Claims which governs this case.

The statute of limitation is no longer treated as a statute of presumption, but a statute of repose. The memory of men is uncertain. The good order and quiet of communities is of paramount importance, and the statute of limitations at the same time guards against the weakness and uncertainty of the memory, and induces more order and quiet in political communities, and more vigilance on the part of creditors and claimants, and will be considered with favor and construed with ordinary liberality by the courts. But where the debtor has within six years paid a portion of the claim, or made a new promise to pay, the statute will commence to run anew from such payment or promise.

In the case at bar payment of a part of the appellee's claim was made within six years from the time the action was brought, and promises made by the defendant's agent respecting the unpaid balance, and hence the claim is not barred by the statute. There has not been six years of repose.

Spring *vs.* Gray, 5th Mason, 523.
Parsons on contracts, 3 Vol, p. 66.
Angell on Limitations, pp. 14 and 15.

SANBORN & KING,
Counsel for Appellee.